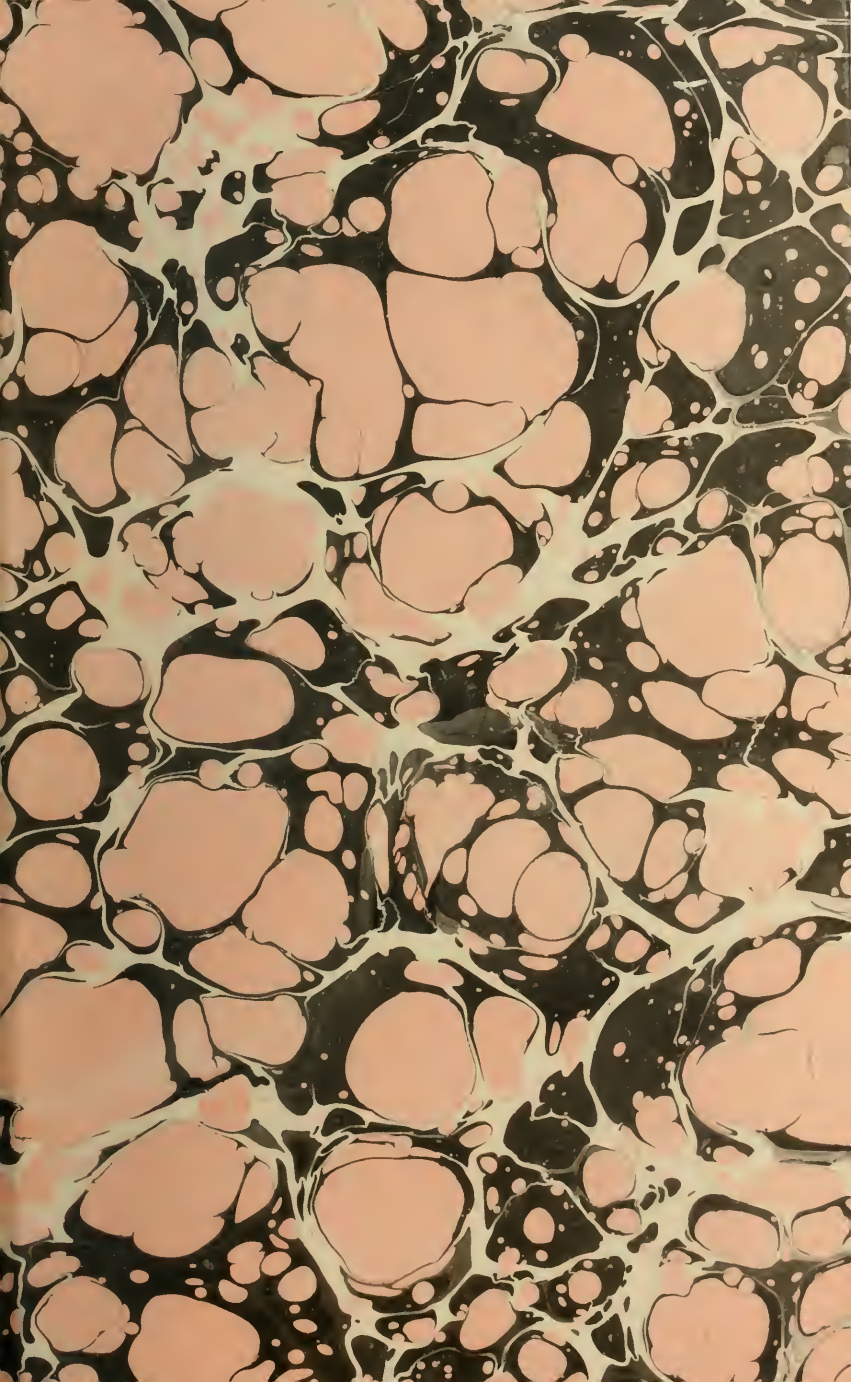

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THE

CASE

OF THE

Forfeited Eſtates

IN

SCOTLAND.

Conſider'd in a

LETTER

TO A

NOBLE L---D.

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THE

CASE

OF THE

FORFEITED ESTATES

IN

SCOTLAND.

My L---d,

YOUR L---dſhip's Thoughts are ſo much employed about thoſe Tranſactions which more immediately relate to the Southern Part of the Kingdom, that Affairs of great Conſequence to the Good and Happineſs of the whole Iſland may ſometimes eſcape your Obſervation, when they paſs in the Northern Parts of it, and at a diſtance from your View. But ſince the Intereſt, Peace, and Quiet of the Government, and of the Minds of the People in *Scotland* have ſuch a Connexion with the ſafety of the whole Kingdom, they may well deſerve your L---dſhip's Conſideration.

The Danger we were brought into by the late Rebellion, which broke out in the North, and the Influence it has had on Affairs of the greateſt Importance to us all, together with the Regard and Concern every true *Briton* ought to have for the Good and Proſperity of every Part of the united Kingdom, will excuſe my laying before your L—dſhip a few impartial Obſervations on ſome Things relating to this Part of the Iſland, which have of late made ſo much Noiſe amongſt the People of this Country; and I hope they will be a ſufficient Argument with your L—dſhip, to ſpare a little of your Time, to peruſe what I here take the Liberty to offer you, concerning the Caſe of the Forfeited Eſtates in *Scotland*. And I trouble you chiefly with what concerns them, becauſe I find there has not near ſo much Clamour nor Difficulty ariſen about that Matter in *England*, as in this Country, where the Enemies to HIS MAJESTY'S Government are ſtill numerous; and becauſe I'm afraid this has already been us'd as an Argument to make our Enemies Abroad as well as at Home believe, that the Forfeiting Perſons, and their Cauſe, have yet a ſolid and well founded Intereſt in this Country.

I beg leave therefore, in the firſt place, to repreſent the Condition, in which I take thoſe Eſtates to ſtand at preſent.

The whole forfeited Real Eſtates, a few excepted, are ſequeſtred by Decrees of the Lords or Judges of the Court of Seſſion in *Scotland*; whereby HIS MAJESTY and the Publick are diveſted of the Poſſeſſion of them, and the Authority of that Court is interpos'd to prevent the Payment of any Part of the Rents or Produce ariſing from them into the Exchequer: And ſuch Factors, or Stewards,

have

have been made choice of by Creditors, and authoriz'd by the Lords of Seſſion, to poſſeſs thoſe Eſtates, and to receive and levy the Rents by Diſtreſs in Caſe of Non-payment, as makes them ſeem rather to be continued in the Poſſeſſion of the Forfeiting Perſons, than preſerv'd for the Intereſt of the Creditors and the Publick; neither of whom can be admitted to the Poſſeſſion of any Part of them, or receive any part of the Rents ariſing from them, during the Continuance of thoſe Sequeſtrations: that is, till all the Suits, which may ariſe from the Claims of Creditors, or the Artifices of Lawyers, be fully determin'd.

And the greateſt Part of the forfeited Perſonal Eſtates, ſuch as were not carried off and conceal'd before the Commiſſioners of Enquiry could enter upon the Execution of their Truſt, are put under Arreſtments at the Inſtances of ſome pretended Creditors; by which Arreſtments (or Warrants by the Authority of the ſaid Judges, which are of the Nature of Sequeſtration) Debts due to the Forfeiting Perſons by Bond, or other Sums of Money of whatever Kind, in whatſoever Perſons Hands, are appointed to remain there, till the Juſtice of the Creditors Claims be determin'd, or till Security be given by the Debtor for Payment of the Debt, if found due by Law upon Trial.

This I take to be the fair State of the Caſe. To which I beg your L--dſhip would allow me to ſubjoin ſome few Obſervations, before I come to examine, how far thoſe Sequeſtrations are well founded in Point of Law.

1. Thoſe Decrees of Sequeſtration were paſs'd in a ſummary Way, on Application made to the Lords of Seſſion by a few Creditors, moſt of whom produc'd no Evidence of their Claims and Rights,

Rights, but were really the neareſt Relations of the Forfeiting Perſons, or entirely in their Intereſt.

2. No Appearance was made, nor Regard had for HIS MAJESTY's and the Publick Intereſt in thoſe forfeited Eſtates, even after the Parliament had paſs'd an Act, *declaring them veſted and adjudg'd to be in the actual and real Poſſeſſion of* HIS MAJESTY, *without any Office or Inquiſition thereof thereafter to be taken or found*; and alſo appointing Commiſſioners to enquire into thoſe forfeited Eſtates, and directing the Rents and Profits to be paid into the Exchequer.

3. Thoſe Sequeſtrations were not petition'd for, till after the Forfeiture of the ſaid Eſtates, altho' ſome of the Forfeiting Perſons were long in Cuſtody, before their Trials. But after their Condemnation, when the Publick's Title took place, then the Sequeſtration of their Eſtates was immediately petition'd for and granted, as if theſe were to have been look'd upon as Eſtates without Poſſeſſors, and whereof the Rents were in danger of Periſhing.

4. And laſtly, by thoſe Decrees of Sequeſtration, HIS MAJESTY's generous Intentions for the Benefit of the Publick, whereby he graciouſly and freely condeſcended to renounce his undoubted Right to thoſe forfeited Eſtates, for the Eaſe of his Subjects, are likely to be diſappointed; and the Creditors who are entitled to their juſt and lawful Debts, are reduc'd to the Melancholy Proſpect of tedious and expenſive Law Suits, before their Rights can be ſettled; and none reap Advantage, but thoſe Factors or Truſtees, or rather the Forfeiting Perſons themſelves, for whoſe Benefit more than for the Intereſt of Creditors, moſt of thoſe Factors ſeem to act.

Now I beg leave to offer to your L---dſhip what occurs to me in Point of Law.

Se-

Sequeſtration by the Lawyers in *Scotland* has, on this Occaſion, been deſcrib'd to be (*a*) *The effectual ſeizing the Poſſeſſion of the Eſtates, Goods, and Chattels of Debtors, for Payment and Satisfaction of their Debts.* And this Poſſeſſion is committed to the Care of Factors, to receive and retain the Rents and Profits during the Continuance of the Sequeſtrations.

Even in this View there appears to be no Ground in Law for Sequeſtration in the Caſe of thoſe Forfeitures. For the whole Eſtates, Goods, and Chattels of the Forfeiting Perſons, are veſted and adjudged by the aforeſaid Act of Parliament, to be in the actual and real Poſſeſſion of the Crown: And all Benefits, Advantages, and Rights whatſoever, which belonged to the Forfeiting Perſons, or to which they were entitled, or wherein they were intereſted, on the reſpective Days and Times the ſame became forfeited, are devolved on HIS MAJESTY, and declar'd and adjudg'd to be in his Poſſeſſion.

Now, amongſt other Rights and Benefits which belong'd to the forfeiting Perſons, before their Forfeitures took Place, this of holding and retaining the Right to poſſeſs their own Eſtates, and to levy the Rents and Profits, was unqueſtionably the chief, notwithſtanding any Petitions which their Creditors might have preſented to the Judges for ſequeſtring their Eſtates, provided they offer'd ſufficient ſecurity for paying their Debts. By what Law then, or Rule of Juſtice, can HIS MAJESTY who poſſeſſes for the Publick, and who has given the ſtrongeſt ſecurity to Creditors, by two Acts of Parliament, be deny'd this principal Right and Benefit, without which, all others are of little,

(*a*) *See Anſwers of Creditors in the Appendix to Commiſſioners Report*, P. 17. N. *y*.

tle, or rather no Value? How can the Caſe of the Publick, with reſpect to thoſe Eſtates, be reckon'd worſe than that of the forfeiting Perſons was before their Rebelling? Or, how can the Poſſeſſion be taken from the Publick by Sequeſtration, ſince ſufficient Security is given for the Payment of all juſt Debts affecting thoſe Eſtates? Certainly the Publick ought to poſſeſs thoſe Eſtates in the ſame manner, that the forfeiting Perſons ſhould have done, before they were guilty of Rebellion: Nor is it to be ſuppos'd, that on the Application of ſuch Creditors, the Lords of Seſſion would have ſequeſtred thoſe Eſtates, in a ſummary Way, if the forfeiting Perſons had been ſo happy as to have continued peaceable, except their Credit had failed, and they had fallen into ſuch bad Circumſtances as to make them eſteem'd Bankrupts, before they committed the Treaſon, which cannot be pretended of them. Why then ſhould the Publick, which is the common Debtor to thoſe Creditors, be denied the ſame Juſtice that the Forfeiting Perſons would have had done them, except it be to make Rebellion leſs Penal and more practiſed?

But to make it more fully appear, that this ſummary Method of Sequeſtration, neither would have been us'd againſt the Forfeiting Perſons, if they had continued in their Duty to His Majesty, and been able to offer ſufficient Security for the Payment of their Debts; nor ſhould have been us'd againſt His Majesty and the Publick, who have given ſuch ample Security; I would beg your L—dſhip to examine a little the Effects of Sequeſtration, even in this View of it, and to conſider how contrary it is to common Reaſon, that any Man, or Society, Publick or Private ſhould be diveſted of their Eſtate, and the Poſſeſſion of it taken from them, for paying of their Debts, till

it appear that That Man, or That Society is in Debt to the Value, or near the Value of their Eſtate.

The taking away Poſſeſſion from any Man or Society of their Eſtate, of which the Law preſumes them once to be in the Poſſeſſion, for Payment of Debts, is a thing of ſo ſevere a Conſequence, that it ought never to be practis'd, till the Value of the Debts be ſome way look'd into; and it appear plainly, that the Creditors may be in danger of loſing their juſt Debts, if the Debtor continue in the Poſſeſſion of the Eſtate. For if other Methods of Proceeding be admitted, and Debtors may be turn'd out of the Poſſeſſion of their Eſtates in a Summary Way, before ſome Ground be given to ſuſpect that they are not able to make full Satisfaction and Payment of what they owe; no Man can be certain how long he ſhall be able to hold the Poſſeſſion of his Eſtate. Groundleſs Pretences may be ſoon fram'd, ſo as to have ſome colour of Juſtice; and if ſuch be admitted to take away Poſſeſſion, not only the Means of lawful and juſt Defence muſt immediately fail, whereby the greateſt Frauds may become ſucceſsful; but alſo Poſſeſſion itſelf will be render'd precarious, and liable to be taken away in a manner rather arbitrary than legal. Surely if Sequeſtration imports the taking the Poſſeſſion of an Eſtate from a Debtor, who has an unqueſtionable Title to it, for the Payment of his Debts, there ought at leaſt to be an apparent Danger to Creditors by ſuch Debtor's continuing in the Poſſeſſion.

Before the Cuſtody and Management of ſuch Eſtate be entruſted to a Factor or Steward, it ought to be very clear, that the Debtor turn'd out of the Poſſeſſion, to make way for ſuch Steward or Factor, is leſs to be truſted with the Poſſeſſion and Manage-

ment of his Eſtate than a Steward; and that it will be more for the Advantage of Creditors at leaſt, that ſuch Steward have the Cuſtody, than that the Debtor have it.

But in this caſe, all theſe unreaſonable Circumſtances of an improper Uſe of Sequeſtration operate in the ſtrongeſt manner, and not one of thoſe juſt and neceſſary Requiſites of Sequeſtration can be ſaid to take place. The King, and the Publick, are in a moſt Summary Way turn'd out of the Poſſeſſion of Eſtates belonging to them, for the Payment of Debts: And yet His Majesty's, and the Publick Credit, is not pretended to be call'd in queſtion. The Cuſtody and Management of Stewards upon private and uncertain Security, is prefer'd to the Publick Faith and Care: And the Publick, inſtead of enjoying its Right of Poſſeſſion, is reduc'd to the State of a *Claimant*, and muſt either lay aſide all Thoughts of recovering any part of thoſe Eſtates, or elſe muſt advance more conſiderable Sums out of other Publick Money, for carrying on the neceſſary Suits and Proſecutions at Law for the Recovery thereof, than the whole Value of them, if ſought after in this manner, will probably amount to; whilſt thoſe Stewards or Factors (who, as I ſhall afterwards more fully ſhew your L--dſhip, are too juſtly to be look'd on as Agents and Truſtees for the Forfeiting Perſons) retain in their Hands the whole Rents and Profits ariſing from thoſe Eſtates, and apply them either immediately to the Uſe of the Forfeiting Perſons, or to ſupport Claims upon thoſe Eſtates, to the Prejudice of the Publick.

Theſe Conſiderations, I hope, make it plain to your L--dſhip, that even taking Sequeſtration in this View, and admitting the above-written Deſcription of it, there is little colour in Point of Law for

for it here, and that many obvious Abſurdities muſt neceſſarily follow the extending the Uſe of it, ſo as to comprehend the preſent Caſe.

But I beg leave to give your L—dſhip a more juſt and true Definition of Sequeſtration, which (becauſe Sequeſtration derives its Authority only from the Civil, and no wiſe from the *Scotch* Law) I ſhall ſet down in the Words of the Civilians: *Sequeſtratio [ſeu depoſitum Sequeſtrarium] eſt, cum res litigioſa a Litigantibus, aut Judice, plerumq; ex partium conſenſu, penes tertium deponitur, ut poſt litis eventum victori reſtituatur. Sequeſtration is, when an Eſtate [or Goods] to which ſeveral Parties claim the Right and Title, is by the Parties, or by the Judge, generally with the Conſent of the Parties, depoſited in the Hands of a third Perſon, that upon the Event of the Debate, it may be deliver'd to the Party who ſhall be found to have the beſt Right.*

[I ſhall not here trouble your L—dſhip with enumerating the Circumſtances in which the Interpoſition of a Judge is allow'd, without the Conſent of the Parties contending, that Point being fully clear'd in the Information given in to the Lords of Seſſion, in the name of the Publick, contain'd in the *Appendix* to the Commiſſioners Report, *N.* 12. *p.* 26. where it is plainly demonſtrated, that none of thoſe Circumſtances do take place in the preſent Caſe.]

Agreeable to this Definition, the late Viſcount of *Stairs*, Lord Preſident, or Chief Juſtice of the Court of Seſſion, in his *Inſtitutions of the Law of* Scotland, limits the Uſe of Sequeſtration to Caſes where a Diſpute and Competition of Right to the Eſtate crav'd to be ſequeſtred, in whole or in part, is mov'd by different Parties. But neither his Lordſhip, nor any other Writer of the *Scotch* Law, makes mention of Sequeſtration on account only of Claims for Money payable by the Poſſeſſor of the Eſtate, ſo crav'd to be ſequeſtred. For the other Caſes mention'd by

his Lordſhip come rather under the Title *De Curatore bonis dando*, than under the Head of Sequeſtration.

It is true, this Competition of different Parties contending for the Poſſeſſion, does generally ariſe from the Extinction of the Title and Right of a common Debtor to many Creditors, by Bankrupcy, which is thereby legally devolv'd upon a number of Creditors. This gives occaſion for miſapprehending the true Nature of Sequeſtration, or rather gives ſome colour for advancing a Miſrepreſentation of it, as if it could legally take place againſt a juſt and lawful Title actually ſubſiſting, and not weakned by the Poſſeſſor's want of Credit.

But ſince, according to the genuine Nature of Sequeſtration, it can only take place where the *res* is *litigioſa*, that is to ſay, where there is no clear and indiſputable Right to it, it will be ſufficient for demonſtrating that theſe Sequeſtrations are not well grounded in Law, to make it appear, that the Title of His Majesty and the Publick, is clear and beyond Diſpute; for which end, I need but ſay, that it is grounded on the common and unqueſtionable Rules, which obtain in all Caſes of Forfeitures for High-Treaſon, and farther aſcertain'd by the Act of Parliament for appointing Commiſſioners, *&c.* which declares and enacts, *That thoſe Eſtates ſhall ſtand, and be forfeited to* His Majesty, *his Heirs and Succeſſors, and ſhall be deem'd, veſted, and adjudg'd to be in the actual and real Poſſeſſion of* His Majesty, *without any Office or Inquiſition thereof thereafter to be taken or found.*

From theſe plain and obvious Conſiderations, which I hope are free from all Subtilty, or Ambiguity of Expreſſion, your L—dſhip, I preſume, ſees how little foundation thoſe Sequeſtrations have in Point of Law. I crave the Liberty in the next place, to examine ſome of theſe Arguments which have been brought in ſupport of them. The

The first is grounded on the Act of Parliament *Primo GEORGII*, Intituled, *An Act for Encouraging Superiors, Vassals*, &c. whereby it is provided, That no Conviction, or Attainder of any Debtor, shall hurt or exclude the Rights or Diligences of his Creditors, for Payment and Security of his Debts. From this it is infer'd, that Sequestration being a Diligence or Prosecution competent to Creditors by the Laws of *Scotland*, it may be lawfully us'd by them in this Case. But it may with equal Reason be infer'd, that Imprisonment, and the other Methods of prosecuting Debtors for the Recovery of Debts, may be us'd against His Majesty, by Vertue of this Law, which it would be most absurd to suppose: And the Truth is, the Argument is plainly fallacious; for from a *Salvo* of Diligences or Prosecutions consistent with the Circumstances of the Debtor and Creditors, it infers the Lawfulness of such as are by no Law to be accommodated to either. But the true Meaning of the Law is, That just and lawful Debts and Diligences following thereon, shall have full Effect for establishing the Creditors Preferences amongst themselves, and for securing their Payment to be made according to such Ways and Methods as the Parliament shall direct; and that these Rights and Diligences shall not be cut off by the Forfeitures: But not that Creditors shall have it in their Power to divest the Publick of the Possession, before their Debts be duly stated, and legally enquir'd into. For the Denomination of just and lawful Debts us'd in the Act of Parliament, necessarily supposes, that they must first be enquir'd into. But by the Method of Sequestration the Publick is divested of Possession, and even the Claimants are excluded from it during those Sequestrations. So that according to this way of Reasoning, that which is intended to guard and save the Rights of Creditors from Hurt, would turn to their Prejudice.

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It is next pretended, That the Publick has Right only to the Remainder of the Rents or Value of the forfeited Eſtates, after Payment of Debts due to Creditors. But this ſeems to be extremely trifling, when us'd as an Argument to prevent the Publick's entring upon the Poſſeſſion of thoſe Eſtates, as may appear from what has been ſaid of the Publick's having an immediate Right to poſſeſs thoſe Eſtates, in the ſame manner the Forfeiting Perſons had Right to poſſeſs them; from which nothing can debar it, (as being in the Caſe of a Purchaſer of an Eſtate, with the Burden of the Debts affecting it) unleſs the Publick Faith and Parliamentary Engagements for the Security of Creditors, are ſuppoſed to be bad. For it has already been made evidently appear, that Claims of Money payable out of an Eſtate can be no ſufficient Reaſon for the turning of a Debtor of good Credit out of the Poſſeſſion, and ſequeſtring ſuch Eſtate.

The only tolerable Reaſon for having any Regard to thoſe Sequeſtrations, is, That they are paſs'd by Decrees of the Judges in *Scotland*, whence they may ſeem to be ſome way founded on the Laws of that Country. But it is to be obſerv'd, that the Judges were not unanimous in their Opinions in this Matter: And their Decrees, though great Regard is to be had to them, yet being ſubject to Review, as well as the Decrees of the Judges in *England*, are not definitive, but may be appealed from, and are frequently revers'd by the Houſe of Lords. Beſides, ſummary Sequeſtration is a Method ſeldom or never us'd by the Court of Seſſion, in the Caſe of Private Perſons, on ſlight Grounds. So that the Intereſt which the Government and the Publick have in this Matter in many different

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Reſpects, after and beyond the Payment of Creditors, may excuſe a more narrow Examination of it, and the Liberty of differing from the Judges in *Scotland* concerning it.

Theſe are the principal Arguments which I have heard inſiſted upon, in Defence of thoſe Sequeſtrations. Of what Force they are, I leave it to your L—dſhip to judge.

I ſhall now proceed to conſider the Effect of thoſe Sequeſtrations, Firſt, with relation to the Intereſt of Creditors, and next with relation to the Intereſt of the Government.

The juſt and lawful Creditors (many of whom are zealous and affectionate to the preſent Government) are entitled to the Payment of all their juſt Debts, with as little Charge or Delay as poſſible. But they are debarr'd from their Rights by thoſe Sequeſtrations, and reduc'd to the melancholy Proſpect of being obliged to recover by the moſt chargeable and tedious Proſecutions, which the Artifices of Lawyers can invent, what ought not in Juſtice to be in the leaſt diſputed with them: And many Widows and Orphans are forc'd to undergo the greateſt Hardſhips by thoſe Eſtates being ſequeſtred in this Manner. It is plain to every Man's Obſervation, that the greateſt Misfortune which Creditors can fall under, is the Sequeſtration of the Eſtate of their common Debtor, if their Debts can poſſibly be otherwiſe recover'd. For thoſe who have the cleareſt and moſt indiſputable Rights are thereby not only precluded from Payment during ſuch Sequeſtration, (which perhaps may continue upwards of twenty or thirty Years) but are likewiſe engag'd in a litigious Train of Law Suits, with every other Creditor on the ſame Eſtate, to get their Preferences to Payment adjuſted. And can there be a greater Hard-

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ſhip upon any Man, than to be forc'd to the Neceſſity of Law Suits, when his Claim is indiſputable, and when he would not otherwiſe be oblig'd to have recourſe to Suits at Law, were it not that his Debtors Eſtate is ſequeſtred. Every Body knows, who has any tolerable Acquaintance with the Courts in *Scotland*, what deteſtable Practices are frequently us'd by Factors on ſequeſtred Eſtates, and how Creditors, for the moſt part, not only cannot obtain the Determination of their Claims, nor procure their Ranks of Preference to Payment to be adjuſted for many Years, but alſo even after the Cauſe is brought to this Iſſue, how they are put to an extraordinary Expence, before they can bring ſuch Factors or Receivers to an Account, and recover their juſt Debts ſo decreed to be paid to them, out of their Hands.

But beſides the Hardſhips ariſing from the tedious Train of Law Suits naturally following Sequeſtration, and the unjuſt Advantages made by Factors, there is a very great additional Miſchief to Creditors, occaſion'd by a ſort of Stockjobbers, who, intending to make their Market by Sequeſtrations, do firſt purchaſe Claims on ſequeſtred Eſtates, and then draw out Law Suits with other Creditors to ſuch a Length, that many of them are glad to ſell their juſt Claims for leſs than half the Value. It is very well known, what Eſtates have been purchas'd in this ſcandalous way in this Country. And we may warrantably conclude, that many of the forfeited Eſtates would, by the Continuance of the preſent Sequeſtrations, become a Prey to People who uſe ſuch Practices; and be torn to Pieces at Law, as if the forfeiting Perſons had been Bankrupts; which is indeed the only Caſe, where Sequeſtration ought regularly to take place.

The Gentleman who publiſh'd ſoon after the Rebellion, a Memorial of the State of the Rebel Priſoners, has been well juſtified in ſaying, towards the End of that Paper, " That the way of " Sequeſtrations would make a ſtop to the Payment " of the Debts and Intereſt thereof due to lawful " Creditors, and extend the Calamity of Forfei- " tures much beyond the Caſe of Criminals, and " in Proportion encreaſe the Crys of the People; " and intereſt them in their Sufferings.

This being really the Caſe, and theſe the conſtant and unavoidable Effects of Sequeſtration, as is fully demonſtrated in a Book entituled, *The Crys of Creditors on ſequeſtred Eſtates*, publiſh'd by a Lawyer at *Edinburgh* in the Year 1710, I muſt acknowledge it is extremely ſurprizing to find that (while the Creditors on forfeited Eſtates in *England* have attempted no ſuch extraordinary Methods for obtaining Payment) ſuch Artifices, tho' improv'd by the Enemies of the Government to diſquiet the Minds of the People, ſhould have prevail'd ſo much in *Scotland*, as to obtain the favourable Conſtruction of being intended for the Benefit of Creditors, when nothing can be more evident, than that the Intereſt of the Publick as well as that of the Creditors is ſubverted by thoſe Sequeſtrations, which reduce both to the Neceſſity of tedious Law Suits, for which there is otherwiſe no Occaſion, and which can never be deſirable or advantageous to either.

But becauſe Clamour is ſometimes lookt on to have a real and juſt Cauſe, only becauſe it happens to prevail, unleſs the artful Occaſions of it be diſcover'd, I crave leave to ſet forth the true Springs of thoſe Miſtakes, and of this publick Noiſe. For which end I pray your L—dſhip to obſerve,

That the real Creditors on forfeited Eſtates have appear'd little concern'd in this Diſpute, and that moſt of thoſe who at firſt petition'd for thoſe Sequeſtrations, and are now earneſt for continuing them, are perſonal Creditors, and generally for ſmall Debts; and that of thoſe Creditors ſome are near Relations to the Forfeiting Perſons, or have been Dependers on their Families, whoſe Inducement to endeavour the Continuance of the Poſſeſſion and Management of thoſe Eſtates in ſuch Factors Hands is evident, in Hopes that this may be a Means ſtill to ſupport the Intereſt of the forfeiting Perſons: That others of thoſe Creditors are the very Factors or the Truſtees of the Forfeiting Perſons, who ſince their Petitioning for Sequeſtration were made choice of by the reſt, and appointed to be Factors by the Lords of Seſſion, whoſe advantage to have thoſe Eſtates remain ſequeſtred is plain: That others who have meddled with Part of the Effects of Forfeiting Perſons for their Uſe, join'd in Petitioning for thoſe Sequeſtrations, hoping thereby to prevent their being called to an exact Account: That others of thoſe pretended Creditors being Dependers on the Courts of Juſtice, have been principal Promoters of the Sequeſtrations, in order to create a Multiplicity of Law Suits: And laſtly, that others are zealous for the Continuance of thoſe Sequeſtrations, from a Principle of Jacobitiſm, that ſo while the Forfeiting Perſons ſtill in Effect enjoy their former Eſtates, the Cauſe of the Pretender may be the better ſupported; and ſuch may juſtly be ſuſpected, not to have ſo much in their View, the ſecuring the Payment of their pretended Debts, as by this Method, to delay the Publick's entring into the Poſſeſſion of thoſe Eſtates, as long as ever the vain Hopes remain of their returning to the Forfeiting Perſons.

From

From all which it is not to be much wonder'd at, that ſuch pretended Creditors have been induſtrious in raiſing Clamours againſt the Proceedings of the Government in this Affair.

Let me next repreſent to your L--dſhip the Effects of thoſe Sequeſtrations, with relation to the Intereſt of the Government.

It is juſtly to be ſuſpected, that the Deſigns and Wiſhes of ſome People by thoſe Sequeſtrations (which may perhaps continue twenty or thirty Years, as has already been obſerv'd) are, that thoſe Eſtates may be thereby kept entire, ſo as to prevent any Part of them from ever coming into the Poſſeſſion of the Publick, in expectation of a new Revolution, by which all the Forfeiting Perſons ſhall be reſtor'd to their Eſtates; or at leaſt, in expectation, that by the extenſive Clemency of this Government, ſo many of the Forfeiting Perſons may come to be reſtor'd to their Eſtates, as will re-eſtabliſh the Intereſt of the Pretender in the ſame flouriſhing Condition which it was in before the Rebellion. So that in this Caſe, thoſe Factors or Stewards ſhall be underſtood to have been Managers for the Forfeiting Perſons, during their Exile, and at length to be accountable to them, as if they had been appointed their Truſtees to take Care of their Affairs during their Abſence. I ſhall not ſuppoſe, that all who appear concern'd in this Matter have ſuch Things in View, or have ſuch Wiſhes, or deſire a new Revolution; but no Doubt theſe are the Aims of many who appear ſo forward in this Affair.

In the next place, while the innocent and loyal Creditors are debarr'd from receiving Payment of their yearly Intereſt, and the Publick is precluded from the Poſſeſſion, the very Forfeiting Perſons themſelves reap the Benefit. For many of them may be ſaid ſtill to poſſeſs their Eſtates, or at leaſt

their Truſtees for their Uſe, as moſt of thoſe are who are appointed Stewards or Factors during the Sequeſtrations. And this Invention of Sequeſtration gives their Clandeſtine Poſſeſſion this additional Advantage, *viz.* to ſhelter them from the juſt Demands of Creditors, and free them from the Incumbrance of the Intereſt of the Creditors Debts, which they were obliged to pay yearly before their Forfeitures.

In the third place, nothing can have a worſe Effect with relation to the Intereſt of the Government, than the very Characters of thoſe Factors authoriz'd by the Lords of Seſſion. Moſt of them are known to be Jacobites, and Truſtees for the Forfeiting Perſons; nay, even ſome of them were concern'd in the late Rebellion; and do now uſe the Power given them in direct Oppoſition to the Intereſt of the Government, to encourage and keep up a Spirit of Rebellion and Diſaffection, and to oppreſs thoſe who are well affected to the Government in ſeveral Places in this Country, in a more unaccountable Manner than even the Forfeiting Perſons themſelves did preſume to do at any time, ſince the Happy Revolution; many Inſtances of which might be given, were it needful.

Your L—dſhip may eaſily apprehend by all this, what prejudice thoſe Things do to the Intereſt of the Government in *Scotland*: there is good Reaſon to believe, that moſt of the Rents already due, have been applied for Uſes hurtful to it, and deſtructive to the Publick Peace of the Kingdom; and that Ways have been made Uſe of not only to ſend a good Part of the Forfeiting Perſons Eſtates over Seas after them, but alſo that all the Contrivances which could be invented to raiſe Money out of many of thoſe Eſtates, have been taken ſince the Forfeitures. For Example, ſeveral Tenants who have Claims for two Years Rent, by

Virtue

Virtue of the Act of Parliament for *Encouraging Superiors, Vassals, Tenants,* &c. have been induc'd, or rather forc'd by threatning of those Factors, to assign their Claims to Trustees, for the Use of the Forfeiting Persons. And many of the Tenants have been harrass'd, and threatned to be turn'd out of their Farms, unless they did so. It is farther to be observ'd, that so little Regard has been shewn for preserving entire the Fund for Payment of Creditors, that most of the Decrees appointing Factors or Receivers on the forfeited Estates are so fram'd as not to oblige those Factors to account for the Rents and Produce of them in the Year 1715, nor for any Arrears of former Years Rents, which might be in the Tenants Hands at that Time: All which falls thereby plainly to the forfeiting Persons; so that 'tis no hard Thing to conjecture from whence a considerable Part of the Money was rais'd which was remitted to *Sweden* for carrying on that intended Invasion. What fatal Effects those Things would have produc'd in *Scotland,* had not the design'd Invasion been happily prevented, or what Encouragement they may give to the Enemies of the Government to attempt the like again, is easy to imagine.

To this it may be added, That the disorderly and confus'd State in which these Matters stand, has afforded the Enemies of the Government a fair Opportunity of creating Prejudices against it, by imposing upon the World, and alarming innocent Creditors with groundless Jealousies and Fears, as if the Publick had a Mind to defraud them, and that they certainly are design'd to be abus'd, trick'd, and cheated. This is spread about not only by the Enemies to the Government, but also by other designing Persons: and one can scarce imagine,

gine, how far this Deluſion has prevail'd. Whoever is a little acquainted with the Affairs of *Scotland*, knows how much this Deceit has prevail'd in the Minds of the People. For ſo extraordinary are the Methods which are taken, that even the Government is blam'd as being the Occaſion of thoſe Hardſhips to Creditors. And, to continue the Averſion in the Minds of People to the Union, they are made believe, that if once the Rents are paid into the Exchequer, all that Money is to be carry'd out of this Country into the Exchequer of *England*; and that ſo Creditors will be put to great Trouble in procuring Payment from thence. It is ſpoke of as a Matter, on which it is pretended great ſtreſs ſhould be laid, that Creditors can proceed by Diſtreſs againſt the Perſons and Goods of Factors authoriz'd by the Lords of Seſſion; but that they cannot have this Method to compel the Exchequer, in caſe of Non-payment, when once the Rents are lodg'd there; though it is well known that the Regularity of Exchequer Payments leaves no Occaſion for ſuch compulſory Methods; and that it is eaſier for thoſe Factors to avoid making effectual Payments to Creditors, notwithſtanding ſuch Diſtreſs, than it can be to ſhun making Payments out of the Exchequer, according to the Directions of Parliament.

But the more ſuch Deceit prevails, the more reaſon there is to give convincing Proofs of the contrary, and to ſhew that Creditors to the Publick may be better ſecur'd, and better provided for, by having their clear and juſt Debts made good, and their yearly Intereſt paid in the mean time, in the moſt ſpeedy and eaſy way that can be thought upon, rather than by obliging them to expenſive Law Suits.

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It appears from the few above-mentioned ill Effects, and unavoidable Conſequences of thoſe Sequeſtrations, as they ſtand at preſent, to be abſolutely neceſſary for the Peace and Safety of *Scotland*, that ſome proper Methods be taken on the one hand to diſcourage the Spirit of *Jacobitiſm* and Rebellion, which is ſtill raiſing up its Head in that Country, chiefly by reaſon that thoſe Eſtates continue in the Hands of ſuch who make uſe of them for fomenting a new Rebellion, both from Abroad, by ſtill remitting part of the Rents over Seas to the Forfeiting Perſons; and at Home, by encouraging the Enemies of the Government, and oppreſſing His Majesty's Loyal Subjects: And alſo, on the other hand, that ſome thing be done to make good the Parliamentary Engagements for the Security and Payment of juſt and lawful Creditors, who can't but vaſtly ſuffer by the Continuance of thoſe Sequeſtrations as they now ſtand; and to quiet the Minds of honeſt People, who are artfully led into Miſtakes by malicious Clamours induſtriouſly rais'd by the Enemies of the Government, on purpoſe to keep up groundleſs Jealouſies, and alſo by other deſigning People out of private Views.

I ſhall not take on me to preſent, or inſiſt upon any particular Method, for attaining thoſe Ends, that being a Work for Perſons of greater Abilities than mine. But with great Submiſſion to your L—d-ſhip's Judgment, I ſhall freely offer my poor Thoughts concerning the two Methods I have heard propos'd. One is, to inlarge the Powers of the Lords of Seſſion: And the other is, to enlarge thoſe of the Commiſſioners of Enquiry.

As to the Enlarging the Powers of the Lords of Seſſion, and committing the Management of thoſe Eſtates wholly to them, I would beg the liberty to obſerve in the firſt place,

That

That the Steps already made by thoſe Lords in this Affair, (though I will not be ſo bold as to ſay they are either contrary to the Intent and Meaning of that Part of the Act of Parliament *appointing Commiſſioners to Enquire*, &c. which reſerves the Determination of Claims to the Direction of an Act or Acts of Parliament to be made, or even that they proceed upon a Miſtake, yet I may mention what is Fact, that is, That theſe Steps) are plainly contrary to the Senſe of that Act of Parliament, as it is underſtood by all the Judges in *England*, who have made no Steps towards the Determination of any Claims on Forfeited Eſtates, nor admitted of any Suits or Proſecutions founded upon them; and have been far from doing any thing to interrupt the Publick's Poſſeſſion of thoſe Eſtates, or to prevent the Payment of the Rents and Profits into the *Exchequer*.

Another Thing I would obſerve is, That the Miſchiefs ariſing both to the Government, and to the Creditors on the Forfeited Eſtates, by the abovemention'd Sequeſtrations, and the unhappy Choice of Factors or Stewards, are owing to the Proceedings of thoſe Lords in this Matter.

I ſhall add no more on this Point, leſt I may ſeem to arraign or accuſe the Lords, which, as it is none of my Buſineſs, is far from my Intention: But if this Propoſal be examin'd a little more narrowly, and the Application of it to particular Caſes be conſider'd, I believe your L--dſhip will eaſily ſee, that it will no wiſe anſwer the pretended Intention; And that it is in this, as in all other popular Clamours propagated to deceive and lead People into Miſtakes, ſomething of Name, of Weight, of Authority and Influence amongſt the People, is drawn in to the Queſtion, which at the bottom has nothing to do with it. The Court of Seſſion, as it is

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the Supreme Court of Judicature for all *Scotland*, is doubtleſs of great Power, and muſt have a great deal of Reſpect from the People of this Country: and what carries the Appearance of Regard or Advantage to them, will certainly, at leaſt 'till it be diſcover'd to be a falſe Appearance, obtain a great many Favourers.

But the beſt way to diſcover, whether any thing of this ſort be practicable or not, is to conſider, how it will operate in a particular Caſe. Let me in the firſt place obſerve to your L--dſhip, That the Seſſion is a Court of Judicature; and the Lords, or Judges of it, are ty'd by the Nature and Duty of their Office, to give Judgment between contending Parties, according to what is pleaded on each ſide. They are not to make a ſtrict Enquiry into, or to give Directions about the Stating of Accounts, or the Defences to be us'd by one Party, or the Proſecutions to be carry'd on by the other; but to give Judgment according as things are preſented to them. I put the Caſe, that one of thoſe Eſtates is worth Three thouſand Pounds a Year, that the Yearly Intereſt due to Creditors, and other publick Burdens on that Eſtate amount to One thouſand Pounds a Year; the Proſecutions of Creditors, and of thoſe who levy Publick Taxes, may in a regular manner oblige the Factor to pay this Thouſand Pounds; but ſtill there remains Two thouſand Pounds a Year in his hands; which the Judges cannot diſpoſe of, till ſome Perſon raiſe a Proſecution for it. Thus it may remain in the hands of the Factor during the Continuance of the Sequeſtration, and probably never any Account will be got of it. Beſides, how can the Judges prevent a Colluſion between Factors, and Perſons pretending to be Creditors, to the Prejudice of the Publick, which there is too good reaſon to apprehend will be at-

tempted in many Inſtances in this Caſe? Or how will Judges be able to look ſo narrowly into the Conduct of Factors, as to prevent the Decay of the Rentals of the Eſtate committed to their Care; or to their Practices in making up falſe Accounts, when every Body who is but a little acquainted with this Country knows, how frequently the yearly Rents are diminiſh'd under ſuch Factors Management, and what ill Methods are practis'd by them, in making up their Accounts before the Lords of Seſſion, even where the Parties concern'd in ſequeſtred Eſtates are at all poſſible pains to prevent ſuch Abuſes. And to ſhew your L---dſhip that ſuch Abuſes are frequent, I need only mention the Rule or Order of the Court of Seſſion made in *November* 1710, whereby all Writers and other Dependers on the Court of Seſſion are expreſly reſtrain'd from being Factors or Receivers on any ſequeſtred Eſtate; and the Reaſon given in this Order is, for preventing Abuſes and Inconveniencies ariſing by Writers and other Dependers on the Court of Seſſion, being nam'd Factors on ſequeſtred Eſtates, who being call'd to account for their Management, prolong their Suits to an intolerable Length, to the great Vexation and Expence of the Creditors. Yet it is obſervable, that moſt of the Factors appointed by the Lords of Seſſion on the forfeited Eſtates, are Writers or Dependers on the Court of Seſſion. And how eaſy will it be for ſuch Factors to make up falſe Accounts, where there will be no Body beſides the Judges to controul their Management, or to call them to an Account in the Name of the Publick, for the ſuperplus of the Rents that ſhall remain in their Hands after Payment of the yearly Intereſt due to Creditors, and other annual Burdens?

Then

Then in the Caſe of falſe and fraudulent Claims; Many ſuch will be made for old Debts already paid, by means of which great Parts of thoſe Eſtates will be carry'd off, and be apply'd to the Uſe of the Forfeiting Perſons, or of fraudulent Claimants, if there be none to object againſt ſuch Claims, for the Publick. And it is evident even in this Caſe of extending the Powers of the Lords of Seſſion, that the Evils complain'd of ſtill continue; which are, that thoſe Eſtates are ſtill to be in thoſe Factors Hands, and that all the Creditors, without diſtinction, are oblig'd to the Neceſſity of vexatious, and many of them to unneceſſary Law Suits. Neither is it poſſible, that all Claims, though never ſo clear, can be ſpeedily determin'd before the Lords of Seſſion, becauſe of the Conteſts and Suits which will be artfully carried on, and becauſe of the Forms, which muſt in ſome Meaſure ſtill be obſerv'd, even where the Lords of Seſſion are to determine in a ſummary Way. So that by this Method the juſteſt Creditors ſhall ſtill be under the Neceſſity of having tedious Law Suits, and be left to the Mercy of Stewards or Factors, who ſeldom make Payments, without getting ſome private Gratuity to themſelves.

It is however pretended in favour of this Scheme, That by the Regulations or Rules of the Court of Seſſion, Factors appointed by the Judges on ſequeſtred Eſtates are liable for the Intereſt of Rents receiv'd by them, or which by legal Proſecution might have been receiv'd from a Year after the ſame became due. But few Inſtances can be given where ſuch Factors ever paid Intereſt in this Manner. And whoever conſiders the Difficulty and Charge of fixing by legal Proofs the particular Times when ſuch receiv'd or might have receiv'd Rents, who have the preparing of their own Ac-

counts, and the ſtating of the Arrears or Reſts in Tenants Hands, will eaſily perceive, that ſmall Benefit can ariſe by this Rule even to Creditors, and much leſs to the Publick, where Examination cannot be made during the Sequeſtrations, with that Exactneſs which is practiſed, where private Perſons look after their own Affairs.

Next it is pretended, that notwithſtanding the Sequeſtrations, Creditors may have their Intereſt paid them by particular Order of the Judges. But from the Mixture of falſe and fraudulent with juſt and lawful Claims, there will neceſſarily ariſe an obvious Inconvenience, if thoſe Factors ſhould be allow'd to pay Intereſt to Creditors before their Claims be fairly heard and determin'd. For many who may pretend to be Creditors, will be thereby poſſeſs'd of the Rents, who in the Event, when their Claims ſhall be examin'd, may be found to have had no juſt Claims.

Laſtly, it is pretended, That the ſuperplus of ariſing Rents, above what pays the annual Burdens and Intereſt to Creditors, ought to be applied towards the extinguiſhing of Claims, and the Payment of principal Sums. But this Suppoſition deſtroys the Foundation on which Sequeſtration ought to proceed; for it is plain, that there is no need to ſequeſter an Eſtate where there is ſuch a ſuperplus. But farther, let it be conſider'd, for whoſe Benefit ſuch Payments are to be made? If (as it is the Opinion of ſome People) the Forfeiting Perſons ſhall be reſtor'd to their Eſtates, this were to let their Eſtates return to them in a better Condition than they were in before their Forfeitures, inſtead of the Government's reaping any Advantage by poſſeſſing the free Rents during the Forfeitures, and their Forfeitures being any Puniſhment to them; eſpecially where their Eſtates are

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entail'd. Neither can it be pretended, that thoſe ſuperplus's may be annually paid into the Exchequer, during the Sequeſtrations, for it is impoſſible to aſcertain the Quantity thereof till after thoſe Sequeſtrations are remov'd, and all the Claims and Competitions of every litigious Creditor are determin'd and ſatisfy'd.

Beſides, the Lords of Seſſion, as Judges, could not ſo much as order thoſe annual ſuperplus's to be paid into the Exchequer, except there were ſome Perſon to raiſe Proſecutions for them, in the Name of the Publick; ſo that the Neceſſity of ſome Agent for the Publick, beſides the Judges, appears in every Caſe.

I know not, if I ſhould be much in the wrong to ſay, that a great deal of the Noiſe concerning this Matter may be ſuſpected to ariſe not ſo much from the Regard to the Court of Seſſion, as from the Influence of ſome who would gladly have this Employment of managing the Publick Intereſt in the Forfeitures wholly in this way of Litigation. But the Neceſſity of having ſome Perſon employ'd in that way, is ſo plain and eſſential a Conſequence of this Propoſal, that I beg leave to ſuggeſt what I humbly apprehend would be the Effect of having ſome ſuch Perſon entruſted with the Publick Intereſt in thoſe Forfeitures. To be ſure, ſuch a Perſon's firſt Propoſal would be, That a Sum of Money not under 500 *l.* be advanc'd to him out of other publick Money than the forfeited Eſtates, and that ſome Lawyers be appointed to join with him in the neceſſary Proſecutions. Now this, upon the Matter, is no more than to erect another Commiſſion of Enquiry, which would be under no Neceſſity of making a Report to the Parliament, and with this notable Difference too, that the Commiſſioners are only to be paid out of what ariſes from

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the forfeited Eſtates, and ſo can be no Burden upon any other publick Money; but thoſe other Gentlemen muſt be paid out of other publick Money; and the Publick for this Expence would have nothing but the uncertain Event of litigious Proſecutions at Law.

If this Method ſhould take place, it would be to give up His Majesty's undoubted Right and Title to poſſeſs the forfeited Eſtates, wherein he is fully veſted for the Uſe of the Publick, by the plain Words of the Act of Parliament, and to reduce His Majesty and the Publick to the State of a Claimant. His Majesty's poſſeſſing thoſe Eſtates for the Uſe of the Publick, till the Demands of Claimants be made good, can be of no Hurt to any juſt Creditor, who may be fully ſatisfy'd when his Claim ſhall be found good: But the diveſting His Majesty and the Publick of the Poſſeſſion, is not only contrary to the Intent and Meaning of the Act of Parliament, but will render the Forfeitures a Burden and Charge to the Publick, inſtead of a Benefit; for it would be impoſſible on many Accounts for the Publick to recover the Poſſeſſion of any Part of them by way of Proſecution, without extraordinary Expence and Trouble, which the Wiſdom of the Parliament has thought fit to prevent, by veſting His Majesty in the Poſſeſſion for the Uſe of the Publick, at the ſame time that it provides for the Security of Creditors.

I ſhall now offer what I have to ſay concerning the Propoſal for enlarging the Powers of the Commiſſioners of Enquiry.

The Bill which paſs'd the Houſe of Commons concerning the Forfeitures in the laſt Seſſion of Parliament, is the only Thing I have yet heard offer'd for that End; and though I do not pretend that what is contain'd in that Bill ſhould be follow'd in

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all Particulars, yet I beg leave to examine the principal Objections I have heard againſt it, not becauſe they are of great weight, but becauſe they ſeem to be contriv'd to perplex the Minds of the People, and to amuſe Strangers.

One great Objection is, That by giving the Powers contain'd in this Bill to the Commiſſioners for forfeited Eſtates to determine upon Claims, and order Payment to Creditors in the Manner this Bill appoints, will be to overturn the common Courſe of Juſtice, and be erecting a new Judicature, and an Encroachment upon the Privileges of the Court of Seſſion, which are all reſerv'd by the Articles of Union. I anſwer, it can never be thought any Encroachment on the Court of Seſſion, for the Parliament to open a plain and eaſy Method for fixing the juſt Claims of lawful Creditors, and admitting them to Payment, without Loſs of Time or Expence, and which may be juſtly ſuppos'd a leſs tedious Method than that of vexatious Law Suits. And the Commiſſioners by having this Power to determine clear and indiſputable Claims, are no more than a kind of Arbitrators or Referrees from whom the Parties, who do not acquieſce in their Determinations, have immediate Appeal to the Lords of Seſſion. And the Practice of ſubmitting Differences in Points of Law to be determin'd by Arbitrators, is well known in *Scotland*, and has never been reckon'd an Encroachment on the Courts of Judicature, even though the Decrees of ſuch Arbitrators have by Law as much Force as the Decrees of any Judges.

The Argument brought from the Articles of Union in this Caſe appears to be very ſtrange, which amounts to this. The Court of Seſſion is reſerv'd by the Articles of Union; therefore no Debtor can pay his Creditors, even when he is ſa-

tisfy'd of the Juſtice of their Demands, without a Proſecution before this Court, and a Decree of the Judges upon it. This were indeed to make Courts of Juſtice a Grievance rather than a Benefit to a Country; and to make Creditors ſuffer unneceſſarily, if they muſt be oblig'd to have recourſe to Law Suits in every thing. Any Powers propos'd to be given to the Commiſſioners are no more than the laying down a Method for fixing the more ſpeedy and eaſy Payment of juſt Claims, where they are clear and indiſputable. What is of itſelf plain and clear, needs not the Expence of Suits at Law to determine it. The Commiſſioners are appointed to receive and ſtate the Claims of Creditors, in order to facilitate their Payment: but it were to have continu'd a very unneceſſary Commiſſion, to receive and ſtate Claims, if they cannot admit Claims in order to Payment, which are without Diſpute.

Another Objection againſt this Bill, is taken from the Clamours rais'd againſt it. But if it is conſider'd, how thoſe Clamours are excited, it is ſo far from being an Argument for the Government's yielding to them, that it is rather a ſtrong Reaſon, why ſome effectual Method ſhould be taken for putting thoſe Affairs into diſtinct Order; which will be the ſureſt way to put a ſtop to the Miſtakes of the inconſiderate People, and whereby thoſe Clamours would in a great Meaſure ceaſe, nor would the Authors be able to impoſe any longer on the Country to ſuch a Degree: Whereas, the ſubmitting to thoſe Clamours ſtill makes them increaſe, and adds ſtrength to the Enemies of the Government, who never will give over complaining, if that can be a means for reſtoring the Forfeiting Perſons, and making them in the End entire Maſters of the Country. Thoſe Clamours

mours are originally excited and fomented by the disaffected Party, who by their Artifices have infected the Country to so great a Pitch, that they want not the Impudence and Disloyalty to threaten a new Rebellion, if the Government should offer to put the Forfeitures in Execution. And this Spirit of Disaffection especially prevails in the Northern Parts of *Scotland*, where several of the Forfeiting Persons themselves (or their Friends and near Relations, for them) still remain in the actual Possession of their Estates; and where great Numbers of the People in those Parts have not deliver'd up their best Arms, thus eluding the late Act of Parliament *for securing the Peace of the Highlands*: So that this Argument returns upon the Objectors against the Bill, and renders some such Bill necessary as the best Remedy in this Matter: for those very Persons who are now much busy'd and employ'd in exciting these Clamours, would be the first who would endeavour to draw the Government into Contempt for yielding to them.

Another Objection to this Bill (which is one of the weakest I have heard) is, That it obliges Creditors to accept of Debentures on the Exchequer, in the room of their own Rights and Diligences, and so cuts off their Real Securities, and leaves them on the uncertain and precarious Footing of Personal Rights. I answer, if it is consider'd that these Debentures are to be issu'd out by Authority of Parliament, certifying that such Sum is due by such a Right on such an Estate, without in any Degree cancelling or weakening the original Rights, for which the Payment is to be made; any seeming Force in this Objection vanisheth; and there is no place for suspicion, that the Fund can be diverted from paying of such Debentures so issu'd; which may justly be look'd upon to be

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founded on as good Security, as their Bank Notes in *Scotland*.

Another Thing complain'd of is, the Reverſing of the Sequeſtrations by this Bill, and declaring all Acts and Decrees following thereon void and ineffectual. But this ſeems plainly to be a neceſſary Conſequence of reſerving the Determination of all Claims to the Direction of ſubſequent Acts of Parliament; and the Reaſonableneſs of it appears fully from what has been aboveſaid. Beſides thoſe Eſtates being properly a Part of the Poſſeſſion of the Publick, and the Rents of them being publick Money, with the Burden of juſt Debts, they cannot regularly be put under the Management of any, but ſuch only as are accountable to the Parliament, and do derive their Authority from thence. And farther let it be conſider'd, that all thoſe Sequeſtrations and Decrees which are declar'd void were paſs'd, *altera parte inaudita*, not one Word was offer'd in the Name of the Publick. A deluſory Form of calling HIS MAJESTY'S Advocate and the Officers of State to appear for the Intereſt of the Publick was us'd, when it was well known, ſuch a Call neither would nor could be comply'd with: What better Fate then can thoſe Decrees have, ſince they were paſs'd in ſuch a Manner.

It is very obſervable, that only in *Scotland* all the Obſtructions that could be thought on, have been thrown in the Commiſſioners Way, to render their Commiſſion ineffectual. And indeed ſome Difficulties were foretold by ſome People, which never would have happen'd, or might have been prevented, had it not been, that thoſe who have been the Inſtruments of promoting thoſe Difficulties expected the ſupport of others, whoſe Jealouſies or private Views had made them to be at firſt appehended.

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I am ſorry to obſerve that ſuch Courſes have been taken, and that ſuch Diſputes have ariſen in *Scotland*, for there are no ſuch wranglings in *England*, and that ſome People have excited and ſupported Clamours againſt the Commiſſioners, as if they were the worſt of Men, and that all the bad Things that are ſo juſtly ſuſpected would be the Conſequence of thoſe Eſtates falling into the Hands of artful Lawyers, are now ſuppos'd will be practis'd by the Commiſſioners. It is hard Treatment to ſuſpect Gentlemen whom the Parliament entruſts with this Matter of ſuch Things, when they have given no manner of Ground for Suſpicion by any Thing in their Management, except ſome People may perhaps call their Faithfulneſs and Diligence a Fault; for this is no Paradox to a great many: bating this Exception, I have not heard, that hitherto there is the leaſt Reaſon given for Suſpicion from any one Step in the Execution of their Commiſſion, in which I believe they have been very exact, ſo far as they could proceed. Beſides, it is not in their Power to miſapply the Rents, for thoſe are appointed to be paid into the Exchequer; ſo that the Commiſſioners cannot meddle with the ſame; and the Creditors are guarded from any Injury that might poſſibly be done to them by the Commiſſioners, not only by the Privilege of appealing againſt their Decrees, but alſo by the Liberty they may take of preſenting a Complaint to the Parliament againſt all or any of the Commiſſioners, if they ſhould preſume to commit any unfair Practice. And as to the Publick Intereſt, which, by the way, is the leaſt of ſome People's Concern, who make ſo great a Buſtle about Grievances, the ſame can be in no Hazard from any Steps the Commiſſioners may take; for all their Proceedings are to be laid

before the King and Parliament, and to be subjected to a strict Examination.

The Report of the Commissioners for *Scotland* is said to have been Offensive to the Lords of Session and others, by representing the great Difficulties they met with from those Decrees of Sequestration, and that there was little Assistance given them by some of those, whose Business it was to serve the Government in this Country. But to me these Things appear to be represented in the Report, in the tendereſt manner, that the Facts could allow of, which I take to be true, not having heard the same contradicted. So that the Blame which those Gentlemen would fix upon the Commissioners, appears evidently to be groundless and malicious. And a Prejudice is taken against them by some People who don't like this Commission, because it tends to suppress a Jacobite Interest; others don't like it, because it may probably shorten Law Suits; and others are against it, because they desire the Affairs of this Country to fall into Disorder and Confusion, out of particular private Views. I am sorry indeed to observe, that some others are led into Mistakes about this Commission, by the Clamours and Artifices of those I have just now mention'd; therefore any Reflections which I may have made on others, have no relation to them.

All I shall say farther on this Head is, That I am persuaded many who were for this Bill's taking Effect, had nothing in View but the publick Good, and the speedy Relief of Creditors; and that their Design and Interest in it, was far different from the false and malicious Misrepresentations given of this Matter all over the Country. It were to be wish'd, that either any Mistakes that may perhaps be discover'd in this Bill, could be corrected

rected and amended in this present Session of Parliament: Or that some other better Method could be invented that might produce the same Effect for which this Bill was mainly intended. For my own part, I have no particular Engagement for the continuing of this Commission, if I could see a better and more effectual Means propos'd.

It is made use of as a strong Argument against this Commission, that after Payment of the Yearly Interest of just Claims, and other publick Burdens, with the Commissioners Salaries, and other Charges of their Commission, there will no great Sum arise to the Use of the Publick out of those Estates: But, I think, there is good reason to believe otherwise, and that there would arise a considerable Sum to the Publick out of the Forfeited Estates in *Scotland*, if carefully manag'd, after all necessary Payments and Expences: Which if true, is one good Argument why those Estates should not stand sequestred. But whatever be in this, whether it may prove true or not, 'tis bad Reasoning to conclude, that therefore those Rents should continue in Factors hands, a great Part of which may be made use of to the Prejudice of the Publick, as well as of the Creditors. The Safety of the Publick is concern'd in this, That these Rents be not employ'd in whole, or in part, to Uses hurtful to it.

And now the Question on this Head comes shortly to this; Whether Factors chosen by the Creditors in the manner I have above describ'd, without any Regard to the Publick Interest; or the *Exchequer* fortify'd by express Security of Parliament, for the Payment of just and lawful Creditors, be the proper Repository of the Rents and Profits of the Forfeited Estates, for the joint Benefit both of the Creditors and Publick?

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How far it ought to be in the Power of the King to grant Relief to the Wives and Children of the Forfeited Perſons, and even to ſuch of the Forfeiting Perſons themſelves as His Majesty ſhall graciouſly think fit to pardon, is a thing I ſhall not much meddle with. A true and well grounded Principle of Mercy is very commendable in every one; though it is plain in this caſe, that the too forward Interpoſition of ſome People in favour of the Rebels, who really did act from that good Principle; and of others, who us'd it as a Cover to deeper Deſigns, hath tended to render the Rebels more confident of their own Strength, and conſequently more obſtinate Enemies to the Government; inſomuch that that degree of Tenderneſs, which if it had been apply'd in due ſeaſon, and deriv'd from the proper Fountain, would have been commendable and juſt, is really become unſafe, and dangerous to the future Peace and Quiet of the Kingdom. I believe few are of opinion, that there ſhould be any general Rule taken for pardoning all without Exception, and reſtoring them to their whole Eſtates. The Hardſhips ſome People, who oppos'd the late Rebellion, have met with (if there follow a general and eaſy Reſtoration of all the Rebels) will be no ſmall Diſcouragement to His Majesty's good Subjects, to venture or risk any thing in oppoſition to ſuch an unnatural Rebellion, if Men ſhould be ſo wicked as to attempt the like again.

His Majesty's Clemency is not to be doubted of to thoſe, who will ſubmit and live as good Subjects: And His generous Conduct, with relation to the Fortunes, as well as to the Lives of His Enemies, ought to procure His Majesty the Love, Eſteem and Affection of every one: Therefore if His Majesty ſhall think any of the Forfeiting Perſons deſerving of His Favour, on whom He is

pleas'd

pleas'd to beſtow His Pardon, there may be proper Ways fallen on to procure them ſuch Parts of their Eſtates as ſhall be thought reaſonable. But ſurely it will not be thought proper to ſhew this Favour, but to ſuch only as will own it to the KING's Clemency, and of whoſe good Behaviour the Government may have ſome Aſſurance for the future: And Care may likewiſe be taken, that what is beſtow'd on them be given only for their Subſiſtence, or during pleaſure, which may be afterwards encreas'd, according as they ſhall be found by their future Behaviour to deſerve it; and that in ſuch a manner, as to put it out of their power to have ſo great an Influence in the Country as formerly, leſt ſome of them, even to whom this Mercy and Favour may be ſhewn, ſhould be tempted, if another Opportunity ſhould offer, to rebel again. The ſureſt way to deal with many of the Forfeiting Perſons, (even thoſe to whom the Government may allow reaſonable Favour and Subſiſtence) is to keep it out of their Power, as far as can be, to fall into the like Unhappineſs again; ſo that HIS MAJESTY's Clemency to ſuch of them as are ſo wiſe as to deſerve it, may be conſiſtent with the Peace of the Government.

It is to be wiſh'd, that thoſe to whom HIS MAJESTY ſhall be thus graciouſly merciful, and their Friends, would ſhew a juſt Senſe of the Favours done them, and out of a Regard to the Quiet and Happineſs of their Country, and of their Poſterity, may be engag'd to live peaceably for the future, under HIS MAJESTY's wiſe and eaſy Government. It might with eaſe be made appear, that the Miſfortunes and Hardſhips complain'd of by many in *Scotland*, have been occaſion'd by nothing ſo much as by a diſcontented *Jacobite* Spirit, which has prevail'd ſo far ever ſince the Revolution in this Country.

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The Oppoſition made in *Scotland* to the Settling of the Proteſtant Succeſſion before the Union, was owing to that turbulent Humour: And the Diſcontents which continue, have been fomented by the ſame Party, and other deſigning People, to the great Hindrance of the Flouriſhing of this Country.

The beſt Service thoſe People can now do to their Country, as a Reparation for the Injuries they have formerly done it, is to live in Peace for the future, and heartily to mind their Country's Good.

It may be very reaſonable, that the Government ſhould take care of the Education of ſome of the Forfeiting Perſons Children; who, being little oblig'd to the Folly of their Parents, may be made ſenſible how much they owe to the Bounty of the Government, and may prove good Subjects, on whom conſequently part of thoſe Eſtates might in time be beſtow'd. But if Proviſion ſhould be made by the Publick for them, without due Care being taken of their Education, 'tis to be fear'd they will be ſtill bred up in the Nurſeries of Rebellion.

As to the Propoſal made in the Memorial abovemention'd, that the Commiſſioners may have Power to compound with ſuch of the Forfeiting Perſons, (or their Heirs) to whom His Majesty ſhall extend His Pardon for their Eſtates, upon paying a Fine, ſuch as a Sum equal to three Years Rent, or Income of their Eſtates, or the like, after Deduction of the Annual Burdens and Intereſt due to Creditors. This Propoſal, if what is ſaid of the low, and incumbred Condition of ſome of thoſe Eſtates, be true, will be ſhewing no great Favour to ſome of theſe Families: For in that caſe, after paying of Fines according to this Propoſal, thoſe Perſons muſt of Neceſſity become Bankrupt; and thereby this Harveſt of Sequeſtration would take place in the ordinary Courſe

Courſe of Law, and but an inconſiderable Sum would ariſe hereby to the Publick out of ſuch Eſtates. This would be propoſing a pretty cheap Price for Rebellion to others of thoſe Rebels, and even to eſtabliſh a Precedent, in ſome meaſure, of the Price for which Men may rebel in time to come. But this Propoſal ſays nothing as to the interim Management of the Rents of the Eſtates of ſuch Rebels as are not pardon'd: And if there can be any conſiderable Sum rais'd for the Uſe of the Publick out of thoſe Forfeited Eſtates, this is ſtill the ſtronger Argument againſt the Sequeſtrations. And even in this Caſe, there would be as much Trouble and Difficulty in fixing the Value of the Free Rent, and in diſtinguiſhing pretended and falſe Incumbrances from ſuch as are juſt, as there will now be, in determining of Claims.

I ſhall not dip into the Queſtion, Whether the giving of the Forfeited Eſtates to the Uſe of the Publick, was a good or a bad Meaſure? Some complain of it, becauſe thereby His Majesty is diveſted of the Power of diſpoſing of any Share of thoſe Eſtates, to ſuch of the Forfeiting Perſons as He ſhall find to deſerve it; and therefore, theſe are for reverſing this Grant in favour of the Publick, and are for putting it again in His Majesty's Power to beſtow thoſe Eſtates as He ſhall think good. But this will not be a Remedy to the preſent Inconveniencies Creditors lie under by the Sequeſtrations; for, the ſame Reaſons which occaſion the preſent Sequeſtrations would remain, in caſe His Majesty ſhould give Grants of thoſe Eſtates; there ſtill would be as good Reaſon for Sequeſtring of them in that Caſe, as there is now. Neither does this ſay any thing as to the Management of ſuch Eſtates as the King does not immediately diſpoſe of: Nor can it

be thought, that the *Exchequer* can any wise look after them, till once the Claims on such Estates be stated and determin'd.

But I am afraid I have encroach'd too much on your L--dship's Patience, and shall now only beg leave to say, That Justice to Creditors, the Quiet of the Country in *Scotland*, and in some measure, the Safety of the Government in *Britain*, are so deeply concern'd in this; and it is of so great consequence, that these things may not remain in Disorder, but be effectually settled, that I hope your L--dship will pardon me for having offer'd my Thoughts upon them to your Consideration.

I am, &c.

Edinburgh 21st
December 1717.

An

An ABSTRACT of the BILL which pass'd in the House of Commons Last Session of Parliament, with relation to the Forfeited Estates.

The BILL recites,

THAT by An Act Intitled an Act for appointing Commissioners to enquire, &c. The Forfeited Estates therein mentioned are vested in HIS MAJESTY.

That all Grants thereof to be made by HIS MAJESTY are declared to be void. Whereby, HIS MAJESTY is disabled from making any Charitable Grant for the Wives of Forfeiting Persons, out of the said Estates.

That the Claims of the Lawful Creditors of the said Estates are by the said Act saved, but no Provision made for determining their Claims, nor for payment of what is due to them.

That certain Commissioners therein mention'd, are appointed to enquire of the said Estates, and make Report to the King and both Houses of Parliament.

That the said Commissioners have made Reports, by which it appears, that the Directions of the said Act for paying in the Rents and Profits of the said Estates to the Exchequer of *England*, and *Scotland* respectively, have been in a great Measure ineffectual.

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The BILL therefore Enacts,

That it ſhall be Lawful for HIS MAJESTY to Grant Proviſions to the Wives of Forfeiting Perſons, not exceeding what they would have Right to by the Deaths of their Husbands, and that ſuch Grants ſhall be good in Law, but not to prejudice Lawful Creditors.

The BILL empowers and requires the ſaid Commiſſioners to Summon to appear before them all Claimants on the ſaid Eſtates, to hear and ſee their reſpective Claims decided and determined upon, and upon the Appearance of ſuch Claimant, or Attorney for ſuch Claimant, or after Notice that ſuch Claimant hath been duly ſummoned to appear, to determine in a Summary Way upon ſuch Claims.

And for the Execution of the ſaid and other Powers, the ſaid Commiſſioners are declared to be a Court of Record, and required to enter their Judgments, and Determinations of Record.

That their Judgments and Determinations ſhall be final and binding upon all Parties concerned, except the Party Claimant Appeal from ſuch Judgment and Determination of the ſaid Commiſſioners, to enter an Appeal againſt ſuch Judgment before the Exchequer in *England*, or Court of Seſſions in *Scotland*, within twenty Days after ſuch Judgment is given, and to preſent Exceptions thereto, and the ſaid Court to hear and determine upon the ſaid Exceptions.

The BILL further Enacts, That if any Perſon fraudulently Claim under any forged Deed, or ſatisfied Security, he ſhall Forfeit double the Value claimed for ſuch Offence; and if any Perſon give falſe Evidence, he ſhall be liable to the Penalty of a Perſon in caſe of Wilful and Corrupt Perjury. That the ſaid Commiſſioners ſhall, and they

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are empowered and required to Iſſue out Certificates to Claimants for their reſpective Sums, which Certificates ſhall bear the Legal Intereſt to be paid at the reſpective Exchequers, out of the Rents and Profits ariſing from the reſpective Eſtates on which the Claims are made. And provides, that ſuch Certificates ſhall not contain any Sums on Account of Penalties, for want of paying the ſaid Sums at the Days the ſame became due and payable.

And for the more effectual Levying and granting Diſcharges of the Rents of the ſaid Eſtates, the BILL Enacts, That it ſhall be lawful for the ſaid Commiſſioners to appoint Stewards or Factors on the ſaid Eſtates, with the Power Stewards and Factors uſually have, by the Laws of the reſpective Countries of *England* and *Scotland*, whoſe Salary ſhall not exceed the twentieth Part of the yearly Value of the Forfeited Eſtate.

The BILL Provides, That every ſuch Steward or Factor ſhall take the Oaths by the ſaid Act appointed to be taken by all Officers acting under the ſaid Commiſſioners, and give Bond for a Sum not leſs than two Years Rent of the Eſtates, over which they ſhall be appointed Stewards or Factors.

The BILL Provides, That ſuch Stewards or Factors ſhall be diſcharged and acquitted upon their paying into the Exchequer the Rents by them received, and accounting as in the BILL directed.

The Bill further Enacts, That all Sequeſtrations, Arreſtments, and other Judgments of any Court of Judicature, made and paſſed ſince the 24th Day of *June*, 1715. or which ſhall hereafter be made, otherwiſe than according to the Directions of this

preſent Act, ſhall be void. And the BILL Empowers the ſaid Commiſſioners, to call all and every Perſon who hath poſſeſs'd any Part of the ſaid Eſtates, ſince the ſaid 24th Day of *June*, 1715. to Account for the ſame, and to certify the Sums payable by them to the Exchequer.

The BILL recites, That the Forfeited Eſtates are veſted in HIS MAJESTY, from and after the 24th of *June*, 1715. And Enacts, that all Grants and Demiſes, *&c.* made by the Forfeiting Perſons *bona fide*, and for a full and adequate Price, and Money paid at any Time, before the Time of their Treaſons committed, ſhall be as good as if the ſame had been made before the ſaid 24th of *June*, 1715. And Provides, that the ſaid full and adequate Price and Money received, ſhall be proved by other lawful Proofs and Evidence, beſides the Deeds and Writings upon which the Claim is made.

The BILL further Enacts,

That the Time for Diſcovery of concealed Debts, and other forfeited Perſonal Eſtates, by any other Perſons than the Debtors, or who have been in Poſſeſſion of ſuch Perſonal Eſtates; as alſo for the Diſcovery of concealed Lands forfeited, and of Lands, Tenements, Goods, and Chattels, ſettled or given to Popiſh or Superſtitious Uſes, otherwiſe than by the Truſtees for the ſame, ſhall be enlarged to the firſt Day of *February*, 1717. and that ſuch Diſcoverer ſhall be entitled to the like Rewards, as by the former Act.

The BILL recites ſeveral Inconveniencies to ariſe, for that by the Tenour of the former Act, the Powers therein can't be put in Execution, unleſs four or more of the Commiſſioners therein named

named join therein: And therefore Enacts, that the ſaid Commiſſioners in the ſaid Act named, ſhall be empower'd to put in Execution all the Powers in the ſaid firſt mentioned Act.

A Clauſe for veſting in HIS MAJESTY all the Real and Perſonal Eſtates of attainted Perſons in *Scotland*, purſuant to a late Act for encouraging Superiors, Vaſſals, Landlords, and Tenants, in their Loyalty to HIS MAJESTY, it having been a Doubt, whether or no thoſe Forfeitures were to be applied to the Uſe of the Publick.

A Clauſe for ſaving to *Simon* Lord *Lovat*, the Benefit of HIS MAJESTY's Grant of 500 *l. per Annum*, out of the forfeited Eſtate of *Alexander Mkenzie*.

A Clauſe for empowering the Commiſſioners to determine all Claims in a Summary Way, and to put the Claimants into Poſſeſſion, purſuant to their Decrees. And that all Perſons claiming any Rent Charges out of the Forfeiting Perſon's Eſtate, ſhall have the ſame Power to recover the ſame, as they had before they became veſted in the Crown, provided ſuch Decrees be ſubject to ſuch Appeals as aforeſaid.

Another Proviſo, That if any Perſon having any Grant from HIS MAJESTY of any Forfeitures, who have or ſhall make any Claim before the Commiſſioners, which they ſhall think juſt, then the Money received by Vertue of ſuch Grant, ſhall be deemed as ſo much Money received by ſuch Claimant in diſcharge of his Demand.

A Clauſe that the Creditors ſhall in the firſt place be paid their Debts (their Claims being allowed) out of the Forfeited Eſtates ſold, before any Payment ſhall be made to the Commiſſioners.

And

And that all Crown Lands, whereof any attainted Perſon was poſſeſſed on the 24th of *June*, 1715. ſhall remain in the Poſſeſſion of the Crown.

A Proviſo, That nothing in the Act ſhall prejudice or make void any of the Proviſions made by HIS MAJESTY for the Wives or Children of the late Duke of *Ormond*, the late Earl of *Marr*, or late Lord Viſcount *Bolingbroke* reſpectively.